

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**November 16, 2021**

**Christopher M. Wolpert**  
**Clerk of Court**

JUSTINA ALEJANDRA BAZAN-  
MARTINEZ,

Petitioner,

v.

MERRICK B. GARLAND, United States  
Attorney General,

Respondent.

No. 21-9556  
(Petition for Review)

**ORDER AND JUDGMENT\***

Before **MATHESON, BRISCOE, and PHILLIPS**, Circuit Judges.

On February 19, 2019, the Board of Immigration Appeals (“BIA”) denied as untimely Justina Alejandra Bazan-Martinez’s appeal from an immigration judge’s denial of her application for cancellation of removal. Thirty-one days later, on March 22, 2019, Ms. Bazan-Martinez filed her first motion to reconsider the BIA’s dismissal of her untimely appeal. On October 6, 2020, the BIA denied the motion as time-barred under

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\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

8 C.F.R. § 1003.2(b)(2) (motion to reconsider must be filed with the BIA within thirty days after mailing of the BIA decision).<sup>1</sup>

On November 3, 2020, Ms. Bazan-Martinez filed a second motion to reconsider, asking the BIA to reconsider its October 6, 2020 denial of her first motion for reconsider. On May 19, 2021, the BIA denied the motion for two reasons. First, it explained that an individual “may file only one motion to reconsider a decision that he or she is removable from the United States.” AR at 3 (citing 8 U.S.C. § 1229a(c)(6)(A); 8 C.F.R. §§ 1003.2(b)(2) and 1003.23(b)(1)). Second, it determined that Ms. Bazan-Martinez was seeking “reconsideration of an order denying a previous motion to reconsider,” which it stated is prohibited under 8 C.F.R. §§ 1003.2(b)(2) and 1003.23(b)(1). *Id.*

Ms. Bazan-Martinez, proceeding pro se, timely filed this petition asking this court to review only the BIA’s order denying her second (November 3, 2020) motion to reconsider.<sup>2</sup>

We review the BIA’s denial of a motion to reconsider for an abuse of discretion. *See Belay-Gebru v. I.N.S.*, 327 F.3d 998, 1000 n.5 (10th Cir. 2003). Ms. Bazan-Martinez’s second motion to reconsider sought reconsideration of the BIA’s denial of her first motion to reconsider. But a party “may not seek reconsideration of a [BIA] decision

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<sup>1</sup> The BIA also explained that even if it reached the merits of the motion to reconsider, it would deny the motion because “it [did] not assert any error of fact or law in the Board’s decision.” AR at 27.

<sup>2</sup> Because Ms. Bazan-Martinez proceeds pro se, “we liberally construe [her] filings, but we will not act as [her] advocate.” *Hooks v. Atoki*, 983 F.3d 1193, 1196 n.1 (10th Cir. 2020) (quotations omitted).

denying a previous motion to reconsider.” 8 C.F.R. § 1003.2(b)(2). The BIA therefore did not abuse its discretion in denying the second motion to reconsider.<sup>3</sup>

Exercising jurisdiction under 8 U.S.C. § 1252, we deny the petition.

Entered for the Court

Scott M. Matheson, Jr.  
Circuit Judge

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<sup>3</sup> Ms. Bazan-Martinez’s brief addresses issues that arose prior to and are not addressed in the BIA’s May 19, 2021 decision denying her second motion to reconsider, but we lack jurisdiction to consider them because Ms. Bazan-Martinez did not timely seek review of those issues. *See Belay-Gebbru*, 327 F.3d at 1000. We have jurisdiction only to consider whether the BIA abused its discretion when it denied Ms. Bazan-Martinez’s second motion to reconsider.